

**STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

**IN THE MATTER
OF
DAVID LEE YOUNGER, P.A.**

**DETERMINATION
AND
ORDER
BPMC - 98 - 112**

KENNETH KOWALD (Chair), JAMES EISENKRAFT, M.D. and HILDA RATNER, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **DIANNE ABELOFF, ESQ.**, Associate Counsel.

Respondent, **DAVID LEE YOUNGER, P.A.**, did not appear personally and was not represented by counsel.

A Hearing was held on June 4, 1998. Evidence was received and examined. A transcript of the proceeding was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [**"P.H.L."**]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

Respondent, DAVID LEE YOUNGER, P.A., is charged with professional misconduct within the meaning of § 6530(9)(a)(iii) and § 6530(9)(b) of the Education Law of the State of New York ("**Education Law**").

Education Law § 6530(9)(a)(iii) defines professional misconduct in terms of being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York, would have constituted a crime under the laws of New York State (Petitioner's Exhibit # 1 and §6530[9][a][iii] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(a)(iii) of the Education Law, must determine: (1) whether Respondent has been convicted of a crime in another state and (2) whether Respondent's conduct or underlying act(s) would, if committed in New York State, constitute a crime under the laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of §6530(9)(b) of the Education Law, to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and §6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, under §6530(9)(b) of the Education Law, the Hearing Committee must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice as a Physician's Assistant in New York State on October 25, 1974 by the issuance of license (registration certificate) number 00159 by the New York State Education Department (Petitioner's Exhibits # 1 & 2)².

2. The State Board For Professional Medical Conduct has obtained personal jurisdiction over Respondent (legal decision made by the Administrative Officer [Respondent was personally served and filed no objection to the personal service effected]); (P.H.L. § 230[10][d]); (Department's Exhibit # 1).

3. Respondent was indicted, in South Carolina, for practicing medicine without a license by prescribing controlled substances to patients at the clinic where he was employed. Respondent issued prescriptions for: (1) Darvocet, a Schedule IV narcotic controlled substance; (2) Tylenol with Codeine, a Schedule III narcotic controlled substance; and (3) Ambien 10 mg., a Schedule IV controlled substance (Department's Exhibit # 3).

4. On July 13, 1995, Respondent was sentenced to a term of 1 year in jail or payment of a fine of \$1,000 plus costs for a total of \$1,668.60 (by the General Sessions Court of the State of South Carolina). This sentence occurred as a result of the above indictment for practicing medicine without a license in violation of §40-47-260 of the South Carolina Code of Laws ("S.C. Code") (Petitioner's Exhibit # 3).

5. In South Carolina, practicing medicine without a license (punishable by a fine of not more than one thousand dollars or imprisonment for a period of not more than two years, or both), is a criminal offense and in New York it is also a criminal offense (Class E Felony, see Education Law §6512).

² refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit). P.A. Younger did not submit any exhibits.

6. The Board of Medical Examiners, through the South Carolina Department of Labor, Licensing and Regulation of the State of South Carolina ("**South Carolina Board**"), is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of South Carolina (Petitioner's Exhibit # 4).

7. On October 30, 1996, the South Carolina Board issued a Final Order which revoked Respondent's certificate to practice as a physician assistant in South Carolina (Department's Exhibit # 4).

8. The South Carolina Board found Respondent to be in violations of S.C. Code §40-47-60 and Regulations No. 81-100(L) (3), (10) and 81-100(I)(1), (2) and (3) of the Rules and Regulations of the Board of Medical Examiners (Department's Exhibit # 4).

9. The Hearing Committee accepts the Findings of Fact of the South Carolina Board and adopts same as part of its own Findings of Fact (Department's Exhibit # 4).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations (paragraphs A and B) from the April 28, 1998 Statement of Charges are **SUSTAINED**.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the two **SPECIFICATIONS OF CHARGES** in the Statement of Charges are **SUSTAINED**³.

³ It is also noted that Respondent has not submitted a written answer to the charges and allegations in the Statement of Charges, as required by P.H.L. §230(10)(c). Therefore, in addition to the Hearing Committee's independent determination, the charges and allegations are deemed admitted.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of a crime in the State of South Carolina. Respondent's conduct in South Carolina constitutes a crime under the laws of New York State. The Department of Health has met its burden of proof as to the first specification.

The Hearing Committee also concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice and of professional misconduct by the State of South Carolina and that Respondent's conduct in South Carolina would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to the second specification.

I Professional Misconduct under §6530(9)(a)(iii) of the Education Law.

The Hearing Committee concludes that Respondent's acts or conduct in South Carolina, to wit, his unauthorized practice of medicine (prescribing of controlled substances) without a license in South Carolina, would, if committed in New York constitute a class E felony under Education Law §6512.

Respondent's conviction and conduct constitutes professional misconduct under the laws of New York State.

II Professional Misconduct under § 6530(9)(b) of the Education Law.

The South Carolina Board is a duly authorized professional disciplinary agency. In 1996, the State of South Carolina, through the South Carolina Board instituted disciplinary action against Respondent. In October of 1996, the South Carolina Board found that Respondent had violated South Carolina law and a number of Rules and Regulations of the South Carolina Board of Medical Examiners.

The record establishes that Respondent committed professional misconduct pursuant to, at least, the New York equivalent of §§6512⁴; 6530(9(a)(iii))⁵, 6530(16)⁶ and 6530(24)⁷ of the Education Law.

In the October 30, 1996 Final Order of the South Carolina Board, the facts and conclusions establish that Respondent prescribed a number of controlled substances for a number of patients without the authority to do so, in violation of South Carolina Law and in violation of South Carolina Rules and Regulations. Based on those findings, the South Carolina Board found Respondent guilty of violations of South Carolina Statutes.

Taking the findings of the South Carolina Board as true, the Hearing Committee finds that the record establishes that Respondent prescribed controlled substances without authority and practiced medicine without a license. Respondent did not respond to the charges filed against him here in New York.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under, at least, §§6512; 6530(9)(a)(iii) 6530(16) and 6530(24) of the Education Law. Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

⁴ Anyone not authorized to practice under this title (8) who practices ... shall be guilty of a class E felony.

⁵ See discussion above.

⁶ Each of the following is professional misconduct... A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine.

⁷ Each of the following is professional misconduct... Practicing ... beyond the scope permitted by law...

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license and/or registration to practice medicine as a Physician Assistant in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented. Respondent has not provided any mitigation to his conduct and intentional acts.

The record clearly establishes that Respondent committed significant violations of South Carolina Laws, Rules and Regulations. Respondent's behavior clearly demonstrates that he should not be allowed to continue to practice as a physician's assistant.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented regarding the pattern of practicing as a physician rather than a physician's assistant, it would have resulted in a unanimous vote for revocation of Respondent's license and/or registration.

In determining an appropriate sanction the Hearing Committee has considered, among other things, the nature and circumstances of Respondent's misconduct, the protection of the public, and the standards of practice for physician assistants. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for continuing services of qualified physician assistants against the countervailing concern that society be protected from professional dishonesty.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health, safety and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license and/or registration is the appropriate sanction to impose under the circumstances. The sanction imposed is designed not to punish Respondent, but to protect the people at large. The Hearing Committee notes that the sanction imposed by South Carolina, to wit revocation, is an appropriate sanction to impose in New York.

On the basis of each of the violations of the Education Law, and not a combination of both of them, it is the unanimous determination of the Hearing Committee that Respondent's license and/or registration to practice as a physician's assistant be revoked.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**, and
2. Respondent's license and/or registration to practice as a physician assistant in the State of New York is hereby **REVOKED**.

DATED: New York, New York
June 11, 1998



**KENNETH KOWALD (Chair),
JAMES EISENKRAFT, M.D.
HILDA RATNER, M.D.**

DAVID LEE YOUNGER, P.A.
383 Grove Street
Charleston, SC 29403

Dianne Abeloff, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001



APPENDIX I

IN THE MATTER
OF
DAVID LEE YOUNGER, P.A.

STATEMENT
OF
CHARGES

DAVID LEE YOUNGER, P.A., the Respondent, was authorized to practice as a physician's assistant in New York State on or about October 25, 1974, by the issuance of license number 00159 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about July 13, 1995, Respondent was convicted of violating §40-47-260 of the South Carolina Code of Laws, practicing medicine without a license, by prescribing controlled substances to patients when he was not authorized to prescribe the drugs. Respondent was fined \$1,000.
- B. On or about October 30, 1996, the State Board of Medical Examiners of South Carolina (Board) revoked Respondent's certificate to practice as a physician assistant. The Board found that Respondent violated §§ 40-47-60 of the South Carolina Code of Laws and Regulations No. 81-100 (L)(3),(10) and 81-100 (1), (2) and (3) of the Rules and Regulations of the Board of Medical Examiners in that: Respondent practiced prior to being certified by the Board and performed work assignments, tasks, or other activities which had not been approved by the board, specifically, Respondent, on several occasions, prescribed drugs over his own signature which he was not permitted to prescribe.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Educ. Law §6512, unauthorized practice) as alleged in the facts of the following:

1. Paragraph A.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF

PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1998) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law beyond its § 6530(4) practicing negligently; §6530 (16) a willful or grossly negligent failure to comply with substantial provisions of state laws and regulations governing the practice of medicine; §6530 (24) practicing beyond the scope permitted by law; and

§6512, unauthorized practice as a physician's assistant) as alleged in the facts of the following:

2. Paragraph B.

DATED: April 28, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct